(3) the said contradictory portion must be proved and brought to record; and
(4) the said contradictory portion cannot be admissible as evidence of fact stated therein except for the sole purpose of impeaching the accused's credit.

Order accordingly.

Solicitors: *Gulam Mustaffa & Co; WP Leong; Bachan & Kartar; Collin Goonting & Co; Augustin Negrin & Co.*

Reported by *Prof Ahmad Ibrahim*

Dayasar Corp Sdn Bhd v CP Ng & Co Sdn Bhd

HIGH COURT (JOHORE BAHRU) — COMPANIES (WINDING-UP) NO 42-144 OF 1988
ABU MANSOR J
9 MARCH 1989

Conflict of Laws — Jurisdiction of the High Court Johore Bahru to hear winding-up petition — Whether petition should be filed in Kuching — Company's registered office in Kuching — Forum convenience — Courts of Judicature Act 1964, s 23(1)(b)

Courts and Procedure — Jurisdiction of the High Court Johore Bahru to hear winding-up petition — Powers of Malaysian judiciary — Place of residence of respondent — Federal Constitution, art 121(1) — Courts of Judicature Act 1964, ss 3 & 23(1)(b)

The respondent company was incorporated on 1 September 1982 and had its registered office in Kuching, Sarawak. The petitioner alleged that the respondent was indebted to the petitioner in the sum of $107,357.66 for the price of goods sold and delivered. On 5 September 1988, the petitioner served on the respondent the statutory notice pursuant to s 218 of the Companies Act 1965 but no payment was received. Hence the petitioner filed the petition to wind up.

Held, striking out the petition:

(1) The issue of which High Court has jurisdiction over a matter is determined by s 23 of the Courts of Judicature Act 1964. It is clear that the respondent, residing in Kuching, would come under s 23(1)(b) of the Courts of Judicature Act 1964.

(2) While matters can be heard in any court of the courts of Malaya, it was not the intention of the legislature for any court in Malaya to assume jurisdiction of a matter arising in or which should be filed in a Borneo court. Since the respondent is residing in Kuching, the matter should really be filed in the Borneo High Court, in particular Kuching.

(3) From the point of view of convenience, Kuching would be more convenient, with the respondent residing there and the witnesses being there.

[*Editorial Note*: The petitioner has appealed to the Supreme Court vide Civil Appeal No 02-72 of 1989.]

Cases referred to

1 *Sova Sdn Bhd* v *Kasih Sayang Realty Sdn Bhd* [1988] 2 MLJ 268 (folld)

2 *Syarikat Nip Kui Cheong Timber Contractor* v *Safety Life and General Insurance Co Sdn Bhd* [1975] 2 MLJ 115 (folld)

Legislation referred to

Companies Act 1965 s 218
Courts of Judicature Act 1964 ss 3, 23
Federal Constitution art 121

Ong Ban Chai for the petitioner.
BH Lee for the respondent.

Cur Adv Vult

Abu Mansor J: The petitioner appeals against the order made by this court striking out the petition for the winding up of the respondent company on the ground that the court did not have jurisdiction to entertain the petition or alternatively even if the court had that jurisdiction, it held the forum convenience was elsewhere. The appeal raises the short question whether the petition should really be filed in High Court Borneo.

The facts of the case are as follows. In the petition itself, the petitioner states that the respondent company was incorporated on 1 September 1982. The registered office of the company is at First Floor, Hockien Association Building, Lot 98-99, Green Hill Road, Kuching, Sarawak.

The petitioner alleged that the respondent is indebted to the petitioner in the sum of $107,357.66 for the price of goods sold and delivered. On 5 September 1988, the petitioner served on the company the statutory notice dated 23 August 1988 pursuant to s 218 of the Companies Act 1965 by leaving it at the company's registered office but no payment was received since the service of that notice. Hence the petitioner filed the petition to wind up.

The respondent's application was supported by the affidavit of Chua Beng Thian, its managing director, who deposed that the transaction between the petitioner and the respondent (if any) was done in Kuching. In any case, he denied that the respondent was indebted to the petitioner and he further said that the respondent's witnesses are residing in Kuching.

Mr Lee, for the respondent, submitted that the issue before the court was whether this court had jurisdiction to entertain the petition or whether the forum convenience was Sarawak since the respondent is residing in Sarawak by having its registered office in Sarawak. He submitted that the petition is outside the jurisdiction of the court to entertain.

Mr Lee submitted further that the powers of the Malaysian judiciary are set out in art 121(1) of the Federal Constitution. It is in two High Courts — Malaya and Borneo. Under s 3 of the Courts of Judicature Act 1964, the local jurisdiction of the courts in Malaya are the Malay States and the Straits Settlements and the local jurisdic-

tion of the High Court Borneo is Sabah and Sarawak. He contended that since the registered office of the respondent company is in Kuching, this court therefore has no jurisdiction in this matter for s 23(1)(b) of the Courts of Judicature Act 1964 provides that the High Court will take cognizance of or try matters where the defendant or one of several defendants resides or has his place of business.

He submitted therefore that since the respondent is resident in Kuching, the Kuching High Court must assume jurisdiction. Alternatively, considered from the point of view of forum convenience, as the respondent is residing in Kuching and the witnesses are in Kuching and the transaction was in Kuching, he submitted that it is still in Kuching. Counsel cited the case of *Sova Sdn Bhd* v *Kasih Sayang Realty Sdn Bhd*[1] where my brother judge, Lim Beng Choon J, held that it must have been within the comtemplation of the legislature to distribute work according to the various High Courts for the convenience of all concerned. With respect I agree with that decision.

For the petitioner, Mr Ong Ban Chai says this court has jurisdiction for the Courts of Judicature Act 1964 has provided two High Courts and the matter can be filed and heard in either Sarawak or Malaya, the court has the discretion to decide. He submitted further that if the court decides that it has jurisdiction, then it should be transferred to Kuala Lumpur.

I find Mr Lee's argument to have some merits. I agree with Mr Lee that which High Court has jurisdiction is clearly determined by s 23 of the Courts of Judicature Act 1964 which reads:

> (1) Subject to the limitations contained in Article 128 of the Constitution the High Court shall have jurisdiction to try all civil proceedings where -
>
> (a) the cause of action arose, or
> (b) the defendant or one of several defendants resides or has his place of business, or
> (c) the facts on which the proceedings are based exist or are alleged to have occurred, or
> (d) any land the ownership of which is disputed is situated,
>
> within the local jurisdiction of the Court and notwithstanding anything contained in this section in any case where all parties consent in writing within the local jurisdiction of the other High Court.

And which High Court again is determined by s 3 of the Courts of Judicature Act 1964 which is either Malaya or Borneo. It is quite clear to me that the respondent company, residing in Kuching, would come under s 23(1)(b) of the Courts of Judicature Act 1964. In *Syarikat Nip Kui Cheong Timber Contractor* v *Safety Life and General Insurance Co Sdn Bhd*,[2] Hashim Yeop A Sani J (as he then was) held that the definition of local jurisdiction (in s 3 of the Courts of Judicature Act 1964) sets out the territorial jurisdiction of the High Court in Malaya and the High Court in Borneo as given in art 121 of the Constitution. While matters can be heard in any court of the courts in Malaya, I am of the view it was certainly not the intention of the legislature for any court in Malaya to assume jurisdiction of a matter arising in or which should be filed in a Borneo court. With respect I agree and adopt what is stated by Hashim J (as he then was) in *Syarikat Nip Kui Cheong Timber Contractor* v *Safety Life and General Insurance Co Sdn Bhd*[2] that the definition of local jurisdiction sets out and determines the territorial jurisdiction of either of the High Courts. By this I rule that since the defendant/respondent company is residing in Kuching, the matter should really be filed in the Borneo High Court, in particular Kuching.

Considered from the point of view of convenience, I also held that Kuching would be more convenient with the defendant residing there and the witnesses being there.

On the ground that the matter is in the High Court Borneo's jurisdiction to deal with and also alternatively on the ground of forum convenience being Kuching, I struck out the petition with liberty for the petitioner to have it filed in Kuching. I did consider whether a transfer to Kuching was appropriate. I held that it was not as it was in the jurisdiction of the Borneo High Court. In the event I am wrong, the High Court of Borneo has a separate registry to administer and monitor their own cases in Kuching. The petition for winding up is under a special law and requires close supervision and that can only be done by the Kuching registry. I was of the view it was better that the petition be refiled at the proper registry. I duly struck out the matter. The petitioner appealed.

Petition struck out.

Solicitors: *Ong Ban Chai & Co; Lim, Han & Teoh.*

Reported by *Kevin Mathews*